

UNITED STATES DISTRICT COURT		District <u>Massachusetts - Fed</u>
Name of Movant <u>Jose Ortiz Perez</u>	Prisoner No. <u>20674-008</u>	Case No. <u>1:08 CR 00037-14</u>
Place of Confinement <u>La Tuca Federal Correctional Institution</u>		
UNITED STATES OF AMERICA		V. <u>JOSE ORTIZ PEREZ</u> (name under which convicted)
MOTION		
<p>1. Name and location of court which entered the judgment of conviction under attack <u>US Dist Court</u> <u>Dist of Massachusetts, Boston, Massachusetts</u></p> <p>2. Date of judgment of conviction <u>9/24/07</u></p> <p>3. Length of sentence <u>121 months</u></p> <p>4. Nature of offense involved (all counts) <u>21 USC §§ 846, 841(a)(1),</u> <u>(b)(1)(A)(i) and 21 USC § 841(a)(1), 18 USC</u> <u>§ 2</u></p>		
<p>5. What was your plea? (Check one)</p> <p>(a) Not guilty <input type="checkbox"/></p> <p>(b) Guilty <input checked="" type="checkbox"/></p> <p>(c) Nolo contendere <input type="checkbox"/></p> <p>If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:</p> <p>_____</p> <p>_____</p> <p>_____</p>		
<p>6. If you pleaded not guilty, what kind of trial did you have? (Check one)</p> <p>(a) Jury <input type="checkbox"/></p> <p>(b) Judge only <input checked="" type="checkbox"/></p>		
<p>7. Did you testify at the trial?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>		
<p>8. Did you appeal from the judgment of conviction?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>		

9. If you did appeal, answer the following:

(a) Name of court _____

(b) Result _____

(c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

- [illegible]

- (b) Conviction obtained by use of coerced confession:

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: Attorney misconduct, misrepresentation

Supporting FACTS (state briefly without citing cases or law)

Did not call Jenks or Franks hearing on fact that car was not mine, not registered to me, and told me he tried to impeach testimony - but there are no records to support what he told me.

B. Ground two: Denial of Effective Assistance of counsel

Supporting FACTS (state briefly without citing cases or law) Attorney did not investigate, interview all government and defense witnesses to use at trial, made coercive remarks to prevent me from affirmative defenses, said I would get 30 years to life unless I took a deal.

C. Ground three: Denial of Appeal

Supporting FACTS (state briefly without citing cases or law) I told my Attorney I wanted to appeal. He told me I am not allowed to appeal and he was not my attorney anymore to do appeal anyway.

D.

Ground four: Ineffective Assistance of Counsel
was threatened into taking plea deal.
 Supporting FACTS (state briefly without citing cases or law) was told I must
take an open plea. We met 3 or
4 times only to discuss a plea
deal. I was threatened many times
with life. He said prosecutor did not
want to give me a deal but he
(my attorney) said he got this deal only.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

- (a) At preliminary hearing John Valerio - State before
it became federal Lawrence, MA.
- (b) At arraignment and plea David Duncan - 65 A Atlantic
Ave Boston MA 02110
- (c) At trial David Duncan
- (d) At sentencing David Duncan

- (e) On appeal None
- (f) In any post-conviction proceeding None
- (g) On appeal from any adverse ruling in a post-conviction proceeding None

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?


Yes ☐ No ☒

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.


Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

9-24-08
(Date)


Signature of Movant